

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

PDC04-017, The project(s) being considered are located at/on the southwesterly side of N. Capitol Avenue, opposite Penitencia Creek Road (905 N. Capitol Avenue), ([Yoneda](#), [Owner/ Trumark Properties, Developer](#)). Council District [5](#).

- A Planned Development (PD) zoning and annexation of Phase 1 for the development of up to 113 residential units on a 5.1 gross acres (Lands of Yoneda)
- An R-M Multi-Family Residence District zoning and annexation of Phase 2 on 4.2 gross acres (Lands of Yoneda).
- An R-M Multi-Family Residence District zoning and annexation on 1.76 gross acres (Lands of Chelstowski).
- The annexation only of the Lands of Santa Clara County, Lands of Santa Clara Valley Water District consisting of approximately 4.26 gross acres.

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

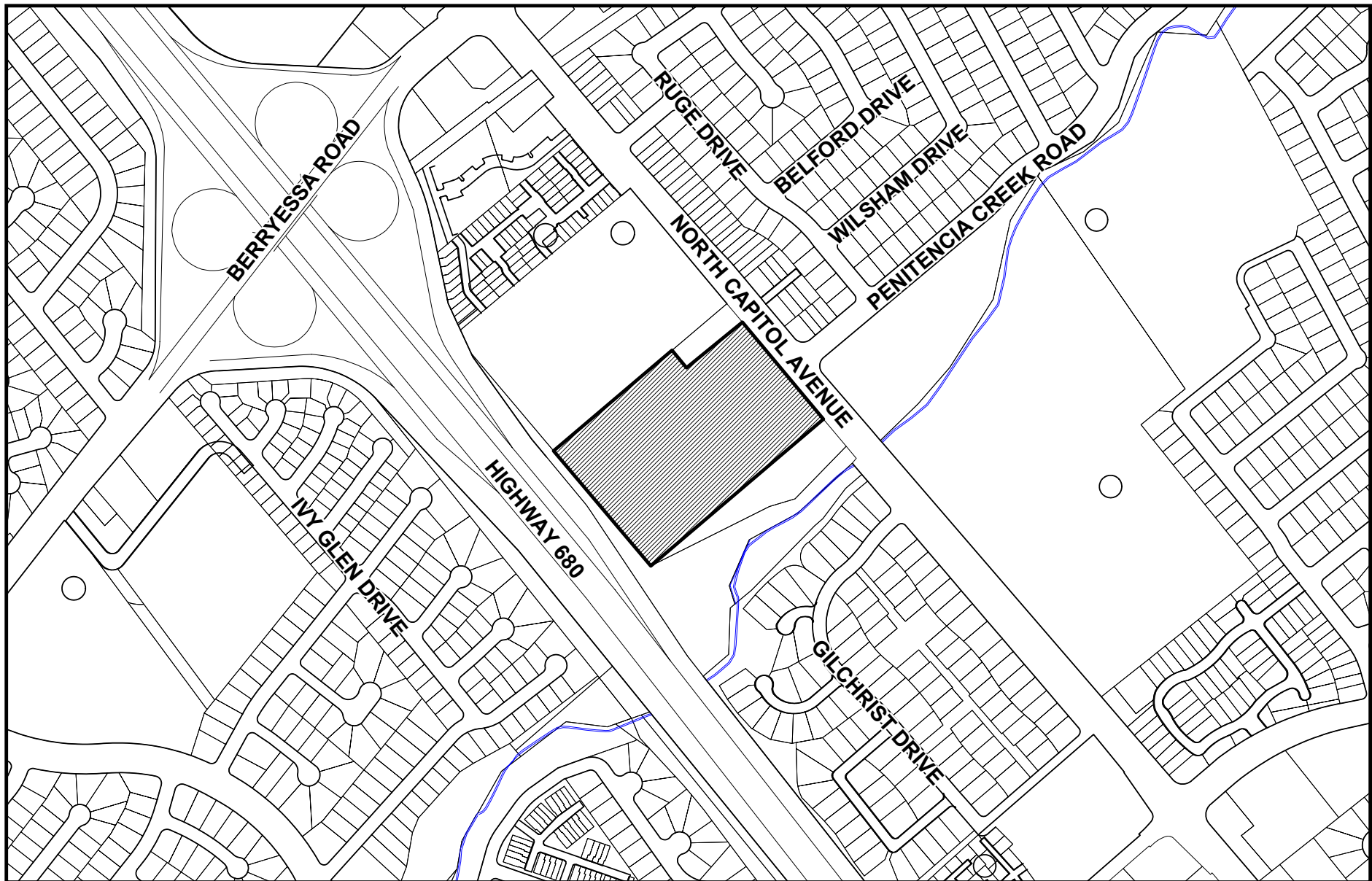
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 1000 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **August 11, 2004**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **July 23, 2004** and ends on **August 11, 2004**.

A public hearing on the project described above is tentatively scheduled for **August 11, 2004 at 6:00 PM** in the City of San Jose Council Chambers, 801 N. First Street, San Jose, CA 95110. The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and the Berryessa Branch Library 3311 Noble Avenue, San José, CA 95132 San Jose, and online at <http://www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2004.htm> Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Mike Mena** at (408) 277-4576.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

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Deputy



Scale: 1"=500'

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District: 04

Quad No: 52

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Creekside Station

PROJECT FILE NUMBER: PDC04-017

PROJECT DESCRIPTION: The proposed project consists of the following:

- A Planned Development (PD) zoning and annexation of Phase 1 for the development of up to 113 residential units on a 5.1 gross acres (Lands of Yoneda)
- An R-M Multi-Family Residence District zoning and annexation of Phase 2 on 4.2 gross acres (Lands of Yoneda).
- An R-M Multi-Family Residence District zoning and annexation on 1.76 gross acres (Lands of Chelstowski).
- The annexation only of the Lands of Santa Clara County, Lands of Santa Clara Valley Water District consisting of approximately 4.26 gross acres.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Southwesterly side of N. Capitol Avenue, opposite Penitencia Creek Road (905 N. Capitol Avenue); (APN 254-29-021). Also 254-29-013, -014, and -020.

COUNCIL DISTRICT: 4

NAME OF APPLICANT: Trumark Companies

MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:

Chris Davenport, Trumark Companies, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506
(925) 648-8300

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

AESTHETICS

- Trees and landscaping shall be provided.
- Downward-directed low-pressure sodium vapor street lights along the public streets shall be provided in order to prevent offsite light and glare.
- Public streets that are impacted by project construction activities shall be swept and washed down daily.
- Debris, rubbish and trash shall be cleared from any areas onsite that are visible from a public street.

AIR QUALITY

- The following construction practices shall be implemented during all phases of construction for the proposed project: 1) water all active construction areas at least twice daily or as often as needed to control dust emissions; 2) cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard; 3) pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites; 4) sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust; 5) sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material; 6) hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more); 7) enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust; 8) limit traffic speeds on unpaved roads to 15 mph; 9) install sandbags or other erosion control measures to prevent silt runoff to public roadways; and 10) replant vegetation in disturbed areas as quickly as possible.

BIOLOGICAL RESOURCES

- Trees to remain on the Phase 2 portion of the project site (Area B) shall be safeguarded during construction by a Tree Protection Plan, including measures such as the storage of oil, gasoline, chemicals, etc. away from trees; grading around trees only as approved, and prevention of drying out of exposed soil where cuts are made; no dumping of liquid or solid wastes in the dripline or uphill from any tree; and construction of barricades around the dripline of the trees, as outlined in the City's Tree Ordinance, that shall be approved by the Planned Department prior to the issuance of a grading permit.
- If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-

construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

- A pre-construction survey for burrowing owls shall be conducted by a qualified ornithologist within 30 days prior to any ground disturbance activities.
- A buffer zone of a minimum of 250 feet shall be established around active burrowing owl nesting sites if nesting burrowing owls are discovered during pre-construction surveys conducted between February 1st and August 31st, and no disturbance shall occur within the buffer zone until a qualified biologist has determined that the young birds have fledged; and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.
- No disturbance shall occur within 160 feet of occupied burrows if over-wintering burrowing owls are discovered using the site during the non-breeding season (September 1st through January 31st); and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of burrowing owls or single unpaired resident bird.
- If any burrowing owls are discovered using the site during pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows after four days to ensure no owls remain underground, and filling all burrows in the construction area to prevent owls from using them.

CULTURAL RESOURCES

- A qualified archaeologist shall be required to monitor all subsurface grading, as follows:
 - If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines.
 - The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results; these reports shall identify any program mitigation to be completed in order to mitigate archaeological impacts

(including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources at a recognized storage facility).

- In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required.
- Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

GEOLOGY AND SOILS

- The project shall be designed and constructed to ensure structural stability as required by the earthquake design regulations of the Uniform Building Code.
- A City approved erosion control plan shall be developed and implemented with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.

HYDROLOGY AND WATER QUALITY

- A Notice of Intent and a Storm Water Pollution Prevention Plan that addresses both construction and post-construction periods and specifies erosion and sediment control measures, waste disposal controls, maintenance responsibilities, and non-stormwater management controls, shall be submitted to the RWQCB and maintained onsite, respectively, to comply with the stormwater discharge requirements on the NPDES General Permit.
- Two feet of fill shall be added to the site, and the buildings shall be designed so that the finished floor is elevated above the projected FEMA flood level.
- A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls, including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMP) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by use of open vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, fossil filters, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.

- A City approved erosion control plan shall be developed and implemented with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.

NOISE

- Mechanical ventilation shall be provided in accordance with Uniform Building Code requirements.
- A 14-foot-high noise attenuation barrier shall be constructed along the southwesterly property line, adjacent to I-680, with a small segment (approximately 80 feet) constructed along the southeasterly property line to control flanking. However, the subject barrier may be reduced should alternative constructions materials and/or methods be incorporated to ensure interior noise levels are consistent with General Plan Policies.
- All private balconies/decks in the first row of homes nearest I-680 shall face away from the freeway.
- Operable windows and sliding glass doors shall be maintained closed and STC rated windows and doors shall be installed at all units to meet the interior standard of 45 dB, as indicated in the following Table 3 - Preliminary STC Ratings and on the Noise Attenuation map, Figure 19.

Table 3. Preliminary STC Ratings

Floor	West Façade (facing I-680)	Northern/Southern Façades	East Façade
Building Row 1 *			
1	na	na	na
2	35	31	28
3	41	39	30
Building Row 2 *			
1	na	na	na
2 and 3	30	30	na
Building Row 3 *			
1 and 2	na	na	na
3	28	na	na
Building Rows 4 and 5 *			
All Floors	na	na	na

NOTE: An acoustical consultant shall review unit plans during the design phase to confirm that the exterior assemblies provide sufficient sound attenuation to reduce noise to the 45 dB criterion.

- Windows and sliding glass doors shall be maintained closed and windows and glass doors with STC ratings 3 points higher than those indicated above shall be installed at all corner rooms with equal window exposure on each façade.

- Construction operations within 500 feet of any residential unit shall be scheduled for the daytime hours of 7:00 a.m. to 7:00 p.m. Monday through Friday so as to avoid the more sensitive evening, nighttime and weekend hours.
- All construction equipment, fixed or mobile, shall be in proper operating condition and fitted with standard factory silencing features; mufflers shall be used on all heavy construction equipment.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **August 11, 2004**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

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Deputy

Adopted on: _____

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